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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/542,259	12/30/2005	Horst Wisniewski	H0075.70107US00	5101
23628 7590 03/11/2009 WOLF GREENFIELD & SACKS, P.C. 600 ATLANTIC AVENUE BOSTON, MA 02210-2206				
EXAMINER				
NGUYEN, PHONG H				
ART UNIT		PAPER NUMBER		
3724				
MAIL DATE		DELIVERY MODE		
03/11/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/542,259

Applicant(s)

WISNIEWSKI, HORST

Examiner

PHONG H. NGUYEN

Art Unit

3724

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 January 2009 & 05 February 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-36 is/are pending in the application.
- 4a) Of the above claim(s) 1-22 and 24-26 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 23 and 27-36 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 30 December 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 23 and 27-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fernandez (5,865,358) in view of Gold (3,086,365).

Regarding claim 23, Fernandez teaches a workpiece cracking device comprising a base 54, a first pair of jaws (left member 42) immovably mounted on the base, a second pair of jaws (right member 42) movably mounted to the base and a drive (80 & 82) for moving the second pair of jaws up and down with respect to a plane (left surface of element 76 defines the claimed plane.) of the workpiece. See Fig. 5.

Fernandez does not teach a control unit with the frequency and the reciprocating force of the second pair of jaws being adjustable.

Gold teaches an actuation rod 15 similar to the actuation rod 86 in Fernandez wherein the frequency and the reciprocating force of the rod are adjustable by a control unit. See Fig. 1.

Therefore, it would have been obvious to one skilled in the art at the time the invention was made to incorporate the actuation rod of Gold into the cracking device of

Fernandez so that a user can control the frequency and the cracking force of the actuation rod.

Regarding claims 27 and 28, the free ends of the pairs of jaws are best seen in Fig. 5 in Fernandez.

Regarding claim 29, since the spaced apart ends of the pairs of jaws in Fig. 2 are considered "cutting edges", the spaced apart ends of the pairs of jaws in Fernandez are considered "cutting edges".

Regarding claims 30 and 31, the cracking device of Fernandez is capable of cracking a disk shaped workpiece. When the right jaw pair 42 pivots in the B-direction, the end of the jaw pair would form an angle of about 5 degrees with respect to the radius of the workpiece.

Regarding claim 32, Gold teaches the hydraulic system comprising a pump 4, a valve 6 and an actuator cylinder 15.

Regarding claims 33 and 34, the valve 5 is controllable.

Regarding claim 35, as Gold's hydraulic system is incorporated into the Fernandez's device, the cylinder's 15 in Gold replaces the cylinder 86 in Fernandez.

Regarding claim 36, the cylinder 86 being connected to the base is best seen in Fig. 5 in Fernandez.

Response to Arguments

3. Applicant's arguments filed 01/06/2009 have been fully considered but they are not persuasive.

The Applicant argues that Fernandez does not teach a drive for moving the second pair of jaws periodically up and down with respect to a plane of a workpiece. This argument is not persuasive. Left surface of element 76 defines the claimed plane and the second pair of jaws moves up and down with respect to that plane.

Conclusion

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to PHONG H. NGUYEN whose telephone number is (571)272-4510. The examiner can normally be reached on Mon-Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Boyer Ashley can be reached on 571-272-4502. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Art Unit: 3724

/P. H. N./

Examiner, Art Unit 3724

March 6, 2009